

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:)	
Pieter Theodorus Joseph Aquarius, et al.)	Examiner: Unknown
International Application No. PCT/NL01/00351)	Group Art Unit: Unknown
International Filing Date: May 8, 2001)	
Serial No. 10/031,111)	
Filed: January 8, 2002)	
For: DEVICE FOR MANUFACTURING)	
CUSHIONS FILLED WITH A)	August 18, 2003
MEDIUM, SERIES OF CUSHIONS)	
AND CUSHION MANUFACTURED)	
BY SUCH A DEVICE, AND)	
TUBULAR FOIL)	

RENEWED PETITION UNDER 37 CFR 1.47(b)

Assistant Commissioner for Patents
Box PCT
Washington, D.C. 20231

Attention PCT Legal Office

Sir:

In the Decision on Petition mailed March 18, 2003, the petition was denied on the basis that (1) applicant had not submitted factual proof that the inventors refused to execute the application or cannot be reached after diligent effort and (2) petition had not submitted proof that it had sufficient proprietary interest in the application because no agreement acknowledging ownership of the application by Free-Flow Packaging International, Inc. has been provided. Reconsideration of that decision is requested.

Inventors' Refusal to Cooperate

The facts in this case are as follows. The invention was made jointly by Messrs. Aquarius and Straver, both of whom are Dutch citizens residing in the Netherlands. At the time the invention was made, Aquarius was an owner and employee of Case Packing Sales Europe B.V., ("Case"), and Straver was an employee of the European operation of Free-Flow Packaging International, Inc.

("Free-Flow"). The application was filed at the request of Case, through its attorneys Vriesendorp & Gaade ("Vriesendorp") with the understanding that it would be assigned jointly to Free-Flow and Case. Since that time, Free-Flow and Case have had a falling out and are currently involved in litigation, Aquarius is no longer an owner and employee of Case, Straver is no longer an employee of Free-Flow, and Vriesendorp no longer represents Case or Aquarius.

As set forth in the original petition supporting statement, and declaration, Free-Flow made repeated requests through its attorney ("Wright") to obtain the signatures of the inventors. Those requests were made through Vriesendorp because Vriesendorp represented Aquarius and Case and was also the one who had obtained the signatures of Straver for the underlying Dutch and PCT applications. Vriesendorp had also obtained the signature of Straver for all of the other applications which had been filed jointly on behalf of Free-Flow and Case.

The decision is incorrect in suggesting that a bona fide attempt has not been made to present a complete copy of the application papers, including the specification, claims and drawings, to the inventors. That suggestion appears to be based upon the fact that attorney Wright did not send copies of the specification, claims and drawings to Vriesendorp along with the declaration and assignment papers. However, it was not necessary for him to do so because the application which was filed in the United States was the published PCT application, and Vriesendorp already had that, as evidenced by his letter of December 19, 2001 (Exhibit A) and Wright's letter of December 21 (Exhibit B).¹

The Legal Examiners also appear to be mistaken in suggesting that Wright does not have first-hand knowledge of the facts set forth in Paragraphs 6 - 8 of his original statement. Each of those paragraphs identifies and authenticates a letter, two of which came from Vriesendorp and one from Wright.

¹Exhibits A - H are attached to the Declaration of Edward S. Wright submitted in support of the original petition. Exhibits I - K are attached to the Supplemental Declaration of Edward S. Wright submitted with this request for reconsideration.

In Paragraph 6, Wright states that by letter dated June 12, 2002 (Exhibit F), Vriesendorp advised him that despite several reminders, they had not received the executed documents from their client, and asked that Wright obtain an extension of the term for submitting them. Wright has first-hand knowledge of receiving the letter and the fact that it came from Vriesendorp, and Vriesendorp presumably had first-hand knowledge about the efforts he made to obtain the signed documents and his client's failure to respond. Given the adversarial nature of the relationship which now exists among the parties and the fact that the statements in the letter were made by an attorney on behalf of his client, those statements are in the nature of an admission against interest and are therefore proof of the matters asserted therein.

Since the statements in Paragraph 7 refer only to acts which Wright did himself (asking Vriesendorp to document the efforts they made to get the inventors to sign the declaration and assignment papers), it is difficult to see how the Legal Examiners can suggest that he did not have first-hand knowledge of those facts.

With regard to Paragraph 8, Wright once again has first-hand knowledge of receiving the letter (Exhibit H) and the fact that it came from Vriesendorp, and Vriesendorp presumably had first-hand knowledge of the actions reported in the letter concerning his continuing efforts to get the application signed and the failure of the inventors to respond. These statements are also in the nature of admissions against interest and thus proof of the matters asserted therein.

Although the date March 18, 2003 is stamped on the top Petition on Decision, that decision was not received by Free-Flow's attorneys until April 14. Shortly thereafter, Wright received a letter from Vriesendorp (Exhibit I), indicating that Vriesendorp no longer represented Case and would no longer be representing Free-Flow either.

Prior to filing the original petition, Free-Flow asked Vriesendorp to document the efforts he had made to get the inventors to sign the declaration and assignment papers (Exhibit G), but Vriesendorp never responded to that request and never provided the requested documentation. Now that Vriesendorp no longer represents

either party and may very well be in an adversarial position himself, Free-Flow has no hope of ever obtaining documentation of and/or a declaration from Vriesendorp as to the efforts he made to get the inventors to sign the application.

Regardless of what Vriesendorp may or may not have done, Free-Flow has made a diligent, bona fide attempt to get the application signed by the inventors. In fact, it has made several such attempts, but the inventors and now their former attorney have failed to cooperate. The interests of justice would not be served by allowing disgruntled inventors and their attorney to thwart the interests of the owner of their invention and the patent rights in that invention because circumstances have changed since the invention was made and the underlying applications were filed.

Proprietary Interest

Free-Flow has a proprietary interest in the application and in the underlying invention by virtue of the fact that Straver's contribution to the invention was made during the course of his employment by Free-Flow and therefore belongs to Free-Flow. See Paragraph 4 of the Declaration of Arthur Graham which was submitted in support of the original petition.

Further evidence of Free-Flow's proprietary interest is found in the letter from Case's attorney Vriesendorp (Exhibit A), requesting Free-Flow's attorney Wright to prepare the declaration, assignment and power of attorney papers for filing the application in the names of Free-Flow and Case. That is a clear acknowledgement of Free-Flow's interest by Case and Aquarius.

In addition, it should also be noted that Free-Flow is a co-applicant in the PCT application itself as well as in the Dutch priority application. See Exhibits J and K. Those applications were filed by Vriesendorp and are further acknowledgments of Free-Flow's ownership of both the invention and the patent rights in it.

It is thus eminently clear that Free-Flow does indeed have an ownership interest in the invention and in the patent applications pertaining to it and that the interests of justice would not be served by denying Free-Flow the opportunity to

pursue those patent rights because the inventors and their attorney ceased to cooperate when the parties had a falling out.

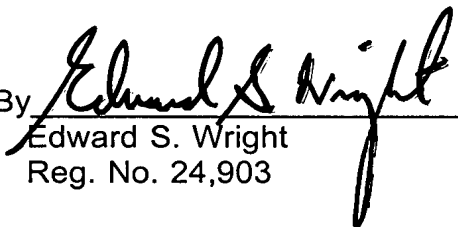
Translation of International Application

As requested, a translation of the international application is being submitted with this response in the form of a copy of the published international application. Although that application was filed in Dutch, it was published in English, and the published application is a translation of international application. Indeed, it is the most reliable translation available since it was published by the International Bureau itself.

Fees

The Commissioner is authorized to charge any fees required in this matter, including the \$130 processing fee for the translation and extension fees, to Deposit Account No. 50-2319, Order No. A-71266/ESW.

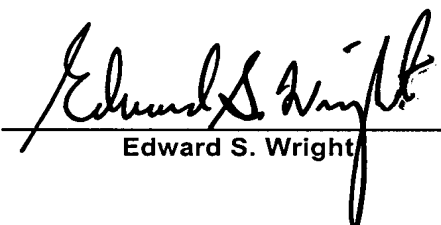
Respectfully submitted,

By 
Edward S. Wright
Reg. No. 24,903

(650) 494-8700

CERTIFICATE OF MAILING

I hereby certify that the foregoing RENEWED PETITION UNDER 37 CFR 1.47(b), the accompanying SUPPLEMENTAL STATEMENT OF EDWARD S. WRIGHT IN SUPPORT OF PETITION UNDER 37 CFR 1.47(b), and a translation of the international application are being deposited with the United States Postal Service as First Class Mail, postage prepaid, in an envelope addressed to: Assistant Commissioner for Patents, Box PCT Washington, D.C. 20231, on August 18, 2003.


Edward S. Wright

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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BY SUCH A DEVICE, AND)	
TUBULAR FOIL)	

SUPPLEMENTAL STATEMENT OF EDWARD S. WRIGHT
IN SUPPORT OF PETITION UNDER 37 CFR 1.47(b)

I, Edward S. Wright, make the following statement under penalty of perjury and upon my oath of office as a registered patent attorney.

1. This application is one of several which have I filed during the past few years at the request of the Dutch firm Vriesendorp & Gaade ("Vriesendorp") on behalf of Case Packing Sales Europe B.V. ("Case") and Free-Flow Packaging International, Inc. ("Free-Flow"). In each such application, Vriesendorp obtained the necessary signatures of the inventors in Europe, including those of Messrs. Aquarius and Straver, the two inventors named in this application. In so doing, I believe he made a complete copy of the application available to the inventors.

2. The Petition on Decision, although dated March 18, 2003, the date stamp on it indicates that it was not received in our offices until April 14. I was out of town that week and did not see the decision until some time later.

3. On or about May 6, 2003, I received a letter from Vriesendorp, indicating that Vriesendorp no longer represented Case and would no longer be representing Free-Flow either. A copy of that letter is attached as Exhibit I.

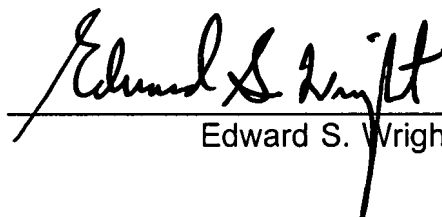
4. Exhibit J is a copy of the first page of the published international application (WO 01/85434, PCT/NL01/00351), as received by me with the letter (Exhibit A) instructing me to file the application. From that letter, the fact that Free-Flow is a co-applicant in the PCT application, and my prior relationship with Vriesendorp, Case and Free-Flow, I had no doubt that the U.S. application was to be assigned jointly to Free-Flow and Case.

5. Earlier today I made an Internet search for information about the Dutch priority application (NL 1015127), but was unable to find it. I did, however, find a counterpart European application (EP 1280651), and a copy of the bibliographical sheet for that application is attached as Exhibit K. That application also shows Free-Flow as a co-applicant.

6. I never received a response from Vriesendorp to my request for documentation as to the efforts he had made to get the inventors to sign the declaration and assignment papers, either at the time the application was filed or when the response to the missing parts request was being prepared. That request is found in Exhibit G.

7. Given Vriesendorp's lack of response and cooperation while he was still representing Case and Aquarius, now that that relationship has been terminated and the parties are involved in litigation, I have no reason to believe that he will ever provide anything beyond that which he has already provided regarding the steps he took to get the inventors to sign the declaration and assignment papers.

This statement is made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Title 18, United States Code, §1001 and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.


Edward S. Wright

oct o i bureau
Vriesendorp Gaade
DEN HAAG - APELDOORN
Sinds 1833
Founded 1833

OCTROOIEN
patents
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for the attention of Mr Edward S. Wright

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The Hague, 6 May 2003
W.M. van de Zandt/HO
BY TELEFAX - 001 650 494 8771
ORIGINAL TO FOLLOW BY MAIL

Dear Mr Wright,

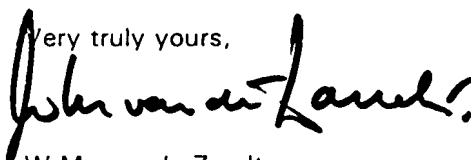
Re: Transfer of Responsibility of Cases in the Joint Names of Case
Packing Sales Europe B.V. and Free Flow Packaging International, Inc.

We have recently requested the Dutch co-applicants, CPS, to elect a new patent attorney in The Netherlands and transfer the handling of their cases to that new attorney. Meanwhile we have learned that the following patent attorneys have agreed to take over representation:

Vereenigde
97 Nieuwe Parklaan
2587 The Hague
The Netherlands

for the attention of Ir. H.A. Witmans

We have laid down our powers of attorney, both from CPS and FFPI, in the various cases we have been handling for the joint companies. We should appreciate learning as soon as possible now the name of the Dutch patent agents Free-Flow will entrust their co-owned cases to.

Very truly yours,

W.M. van de Zandt

Op alle opdrachten zijn onze algemene voorwaarden van toepassing die gedeponeerd zijn ter griffie van de Arrondissementsrechtbank 's-Gravenhage onder nummer 138/2001. Op verzoek wordt een exemplaar van de algemene voorwaarden toegezonden. De voorwaarden bevatten een aansprakelijkheidsbeperking.

Our General Conditions, deposited at the Office applicable to all our assignments. A copy of the contain a limitation of liability.

the District Court in The Hague under number 138/2001, are
Conditions will be forwarded on request. The General Conditions

EUROPESE OCTROOIGEMACHTIGDEN
European patent attorneys
OCTROOIGEMACHTIGDEN
patent attorneys
EUROPESE MERKENGEMACHTIGDEN
European trademark attorneys
BENELUX MERKENGEMACHTIGDEN
Benelux trademark attorneys
ADVOCATEN
attorneys at law

(19) World Intellectual Property Organization
International Bureau



(43) International Publication Date
15 November 2001 (15.11.2001)

PCT

(10) International Publication Number
WO 01/85434 A2

(51) International Patent Classification⁷: **B29C 49/00**

(21) International Application Number: **PCT/NL01/00351**

(22) International Filing Date: **8 May 2001 (08.05.2001)**

(25) Filing Language: **Dutch**

(26) Publication Language: **English**

(30) Priority Data:
1015127 8 May 2000 (08.05.2000) NL

(71) Applicants (*for all designated States except US*): **CASE PACKING SALES EUROPE B.V.** [NL/NL]; Industrieweg 24, NL-6039 AP Stramproy (NL). **FREE-FLOW PACKAGING INTERNATIONAL, INC.** [US/US]; 1090 Mills Way, Redwood City, CA 94063-3120 (US).

(72) Inventors; and

(75) Inventors/Applicants (*for US only*): **AQUARIUS, Pieter, Theodorus, Joseph** [NL/NL]; Industrieweg 24, NL-6039 AP Stramproy (NL). **STRAVER, Frederik, Cornelis, Martinus** [NL/NL]; Hilversumseweg 21, NL-1251 EV Laren (NL).

(74) Agent: **DE HOOP, Eric**; Octrooibureau Vriesendorp & Gaade, P.O. Box 266, NL-2501 AW The Hague (NL).

(81) Designated States (*national*): **AE, AG, AL, AM, AT, AU, AZ, BA, BB, BG, BR, BY, BZ, CA, CH, CN, CO, CR, CU, CZ, CZ (utility model), DE, DE (utility model), DK, DK (utility model), DM, DZ, EC, EE, EE (utility model), ES, FI, FI (utility model), GB, GD, GE, GH, GM, HR, HU, ID,**

IL, IN, IS, JP, KE, KG, KP, KR, KZ, LC, LK, LR, LS, LT, LU, LV, MA, MD, MG, MK, MN, MW, MX, MZ, NO, NZ, PL, PT, RO, RU, SD, SE, SG, SI, SK, SK (utility model), SL, TJ, TM, TR, TT, TZ, UA, UG, US, UZ, VN, YU, ZA, ZW.

(84) Designated States (*regional*): ARIPO patent (GH, GM, KE, LS, MW, MZ, SD, SL, SZ, TZ, UG, ZW), Eurasian patent (AM, AZ, BY, KG, KZ, MD, RU, TJ, TM), European patent (AT, BE, CH, CY, DE, DK, ES, FI, FR, GB, GR, IE, IT, LU, MC, NL, PT, SE, TR), OAPI patent (BF, BJ, CF, CG, CI, CM, GA, GN, GW, ML, MR, NE, SN, TD, TG).

Declaration under Rule 4.17:

..... *as to applicant's entitlement to apply for and be granted a patent (Rule 4.17(ii)) for the following designations* **AE, AG, AL, AM, AT, AU, AZ, BA, BB, BG, BR, BY, BZ, CA, CH, CN, CO, CR, CU, CZ, DE, DK, DM, DZ, EC, EE, ES, FI, GB, GD, GE, GH, GM, HR, HU, ID, IL, IN, IS, JP, KE, KG, KP, KR, KZ, LC, LK, LR, LS, LT, LU, LV, MA, MD, MG, MK, MN, MW, MX, MZ, NO, NZ, PL, PT, RO, RU, SD, SE, SG, SI, SK, SL, TJ, TM, TR, TT, TZ, UA, UG, UZ, VN, YU, ZA, ZW, ARIPO patent (GH, GM, KE, LS, MW, MZ, SD, SL, SZ, TZ, UG, ZW), Eurasian patent (AM, AZ, BY, KG, KZ, MD, RU, TJ, TM), European patent (AT, BE, CH, CY, DE, DK, ES, FI, FR, GB, GR, IE, IT, LU, MC, NL, PT, SE, TR), OAPI patent (BF, BJ, CF, CG, CI, CM, GA, GN, GW, ML, MR, NE, SN, TD, TG)**

Published:

— *without international search report and to be republished upon receipt of that report*

For two-letter codes and other abbreviations, refer to the "Guidance Notes on Codes and Abbreviations" appearing at the beginning of each regular issue of the PCT Gazette.

(54) Title: **DEVICE FOR MANUFACTURING CUSHIONS FILLED WITH A MEDIUM, SERIES OF CUSHIONS AND CUSHION MANUFACTURED BY SUCH A DEVICE, AND TUBULAR FOIL**

(57) Abstract: Device for manufacturing cushions filled with a medium from synthetic pre-processed tubular foil. Flexible pre-processed tubular foil is supplied to the device by a supply device in a supply direction. The pre-processed tubular foil is supplied in flat condition. The pre-processed tubular foil has a first and a second longitudinal edge opposite each other. An introduction means for introducing a medium is provided. A cutting means is present for making a cut in the pre-processed tubular foil only and at least near the first longitudinal edge of the foil. The introduction means is elongated and insertable in the pre-processed tubular foil through the cut made by the cutting means for abutment of the introduction means against the part of the first longitudinal edge that is not yet cut. Sealing means are provided for sealing the pre-processed tubular foil parallel and between the introduction means and the second longitudinal edge, for sealing off the cut. Series of cushions or cushion filled with a medium manufactured by a device according to the invention. Seen in cross-section each cushion comprises a second closed off longitudinal edge, a first cut-through longitudinal edge formed by two ends situated opposite it, and a longitudinal seal situated between the first and the second longitudinal edge. Pre-processed tubular foil provided with a first and second longitudinal edge opposite each other and spaced apart transverse seals, in which each transverse seal extends from the second longitudinal edge up to a distance from the first longitudinal edge.

WO 01/85434 A2

DEVICE FOR MANUFACTURING CUSHIONS FILLED WITH A MEDIUM, SERIES OF CUSHIONS AND CUSHION MANUFACTURED BY SUCH A DEVICE, AND TUBULAR FOILPatent Number: ☐ WO0185434

Publication

date: 2001-11-15

Inventor(s): AQUARIUS PIETER THEODORUS JOSE (NL); STRAVER FREDERIK CORNELIS MART (NL)

Applicant(s): CASE PACKING SALES EUROP BV (NL); AQUARIUS PIETER THEODORUS JOSE (NL); STRAVER FREDERIK CORNELIS MART (NL); FREE FLOW PACKAGING INT INC (US)

Requested

Patent: EP1280651

Application

Number: WO2001NL00351 20010508

Priority Number

(s): NL20001015127 20000508

IPC

Classification: B29C49/00

EC

Classification: B65D81/05A1, B31D5/00C

Equivalents: AU5892101

Cited

Documents:

Abstract

Device for manufacturing cushions filled with a medium from synthetic pre-processed tubular foil. Flexible pre-processed tubular foil is supplied to the device by a supply device in a supply direction. The pre-processed tubular foil is supplied in flat condition. The pre-processed tubular foil has a first and a second longitudinal edge opposite each other. An introduction means for introducing a medium is provided. A cutting means is present for making a cut in the pre-processed tubular foil only and at least near the first longitudinal edge of the foil. The introduction means is elongated and insertable in the pre-processed tubular foil through the cut made by the cutting means for abutment of the introduction means against the part of the first longitudinal edge that is not yet cut. Sealing means are provided for sealing the pre-processed tubular foil parallel and between the introduction means and the second longitudinal edge, for sealing off the cut. Series of cushions or cushion filled with a medium manufactured by a device according to the invention. Seen in cross-section each cushion comprises a second closed off longitudinal edge, a first cut-through longitudinal edge formed by two ends situated opposite it, and a longitudinal seal situated between the first and the second longitudinal edge. Pre-processed tubular foil provided with a first and second longitudinal edge opposite each other and spaced apart transverse seals, in which each transverse seal extends from the second longitudinal edge up to a distance from the first longitudinal edge.